

**EXHIBIT K-1
PUBLIC VERSION
(Motion to Strike, Pages 19-20)**

1 BINGHAM MCCUTCHEN LLP
2 DONN P. PICKETT (SBN 72257)
3 FRANK M. HINMAN (SBN 157402)
SUJAL J. SHAH (SBN 215230)
4 SUSAN J. WELCH (SBN 232620)
FRANK BUSCH (SBN 258288)
5 Three Embarcadero Center
San Francisco, California 94111-4067
6 Telephone: 415.393.2000
Facsimile: 415.393.2286
7 donn.pickett@bingham.com
frank.hinman@bingham.com
8 sujal.shah@bingham.com
susan.welch@bingham.com
frank.busch@bingham.com

9 Attorneys for Defendant INTEL CORPORATION

10 ROBERT T. HASLAM (S.B. #71134)
11 rhaslam@cov.com
12 EMILY JOHNSON HENN (S.B. #269482)
ehenn@cov.com
13 COVINGTON & BURLING LLP
333 Twin Dolphin Dr., Suite 700
Redwood Shores, CA 94065
14 Telephone: (650) 632-4700
Facsimile: (650) 632-4800

Attorneys for Defendant PIXAR

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

**20 IN RE HIGH-TECH EMPLOYEE
21 ANTITRUST LITIGATION**
22 THIS DOCUMENT RELATES TO:
23 ALL ACTIONS.

No. Master Docket No. 11-CV-2509LHK

**DEFENDANTS' NOTICE OF MOTION
AND MOTION TO STRIKE THE
REPORT OF DR. EDWARD E. LEAMER**

Date: January 17, 2013
Time: 1:30 p.m.
Courtroom: 8, 4th Floor
Judge: The Honorable Lucy H. Koh

1 First, Figures 15-17 are biased in Leamer's favor but still do not support his conclusion.
2 In all three charts, Leamer has averaged all employees within each job title depicted; they do not
3 show actual compensation for anyone. *Id.* 248:22-249:2. This reliance on averages is
4 inappropriate to begin with, because it obscures the key question Leamer identifies of whether
5 "all or nearly all" class members' compensation "moves together over time." *See GPU*, 253
6 F.R.D. at 494 ("Averaging masks the differences and by definition glides over what may be
7 important differences."); *Reed v. Advocate Health Care*, 268 F.R.D. 573, 591 (N.D. Ill. 2009)
8 (expert's reliance on averages was a "fundamental flaw" because variations in pay are central to
9 class certification analysis).¹⁵

10 Even so, Leamer's charts still show many examples where the compensation of entire
11 groups of employees (by title) moves in different directions or moves in the same direction but at
12 very different rates, such that the lines cross. This is the *opposite* of his claim that compensation
13 "moves together" and the charts show "smooth movement over time." [REDACTED]

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 [REDACTED] Many other job titles' average compensation lines were also crossing, and
18 certainly not "moving together."¹⁶

19

20

21

22 ¹⁵ Leamer *never* shows the range of pay *within* any job title. Murphy's exhibits show that
23 compensation within job title varies significantly from Leamer's averaged regression results.
24 Murphy Exs. 15A-B, Murphy App'x 7A-D.

25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1
2
3
4
5
6
7
8
9
10
11
12
13

14 Despite these obviously disparate movements over time, Leamer swore “these things
15 behave in … what I would consider a very parallel fashion.” *Id.* 267:15-268:6. Similarly, he
16 claimed Figures 15-17 “illustrat[e]” his opinion that the results of his year-by-year regressions
17 “did not vary substantially over time,” a necessary predicate for his opinion that “the
18 compensation structures were relatively stable over time.” Report ¶ 130; Leamer 235:21-236:2,
19 245:24-246:9. He admitted, however, that conclusion was his “judgment call” based on
20 “eyeball[ing]” but not testing the results, and that he didn’t actually “look at” all the data
21 “carefully” “to evaluate” whether the results did, in fact, “vary substantially.” Leamer 219:1-24,
22 220:20-221:10, 221:20-222:1, 225:2-13. He also admitted that two econometricians “eyeballing
23 a graph, such as this, [could] come to a different conclusion as to the smoothness of the
24 movement over time.” *Id.* 292:17-21. Leamer’s subjective judgments about the charts he chose
25 to display, which were “not carefully” reached, are untested, untestable, and have an admittedly
26 high “error rate” because two experts could simply disagree about how the charts look. *See*
27 *Daubert II*, 43 F.3d at 1319 (opinion inadmissible when based on personal opinion, not science);
28